

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

Brent Labombard,	:
Plaintiff,	:
	:
v.	: File No. 2:09 CV 136
	:
Delores Burroughs-Biron,	:
Jeffrey C. Cobb, Judy Roberts,	:
Jacqueline M. Johnson, Unknown	:
Medical Staff at Chittenden	:
Regional Correctional Facility,	:
Unknown Medical Staff at Southern	:
State Correctional Facility,	:
Defendants.	:

ORDER

The Corrected Report and Recommendation of the United States Magistrate Judge was filed April 30, 2010. Plaintiff's objection were filed on May 20, 2010.

A district judge must make a *de novo* determination of those portions of a magistrate judge's report and recommendation to which an objection is made. Fed. R. Civ. P. 72(b); 28 U.S.C. § 636(b) (1); *Perez-Rubio v. Wyckoff*, 718 F.Supp. 217, 227 (S.D.N.Y. 1989). The district judge may "accept, reject, or modify, in whole or in part, the magistrate's proposed findings and recommendations." *Id.*

After careful review of the file, the Magistrate Judge's Report and Recommendation and the objections, this

Court ADOPTS the Magistrate Judge's recommendations in full.

The plaintiff's motion for conversion of the defendant's motion to dismiss to a motion for summary judgment (Doc. 20) is **GRANTED**, and that the defendants' motion (Doc. 9) is **GRANTED**. Plaintiff's motion for leave to amend his complaint (Doc. 21) to re-plead the defendants' personal involvement is **DENIED** as moot, and the defendants' motion to strike plaintiff's surreply (Doc. 24) is **DENIED**. In addition, because plaintiff has failed to exhaust his administrative remedies, the case is **DISMISSED** without prejudice.

Pursuant to Fed. R. App. P. 22(b), a certificate of appealability is **DENIED** because the petitioner has failed to make a substantial showing of denial of a federal right. Furthermore, the petitioner's grounds for relief do not present issues which are debatable among jurists of reasons, which could have been resolved differently, or which deserve further proceedings. See e.g., Flieger v. Delo, 16 F.3rd 878, 882-83 (8th Cir.) cert. denied, 513 U.S. 946 (1994); Sawyer v. Collins, 986 F.2d 1493, 1497 (5th cir.), cert. denied, 508 U.S. 933 (1993).

Furthermore, it is certified that any appeal of this matter would not be taken in good faith, pursuant to 28 U.S.C. § 1915(a)(3).

THIS CASE IS CLOSED.

Dated at Burlington, in the District of Vermont, this 1st
day of June, 2010.

/s/ William K. Sessions III
William K. Sessions III
Chief Judge
U.S. District Court